United Nations A/HRC/38/NGO/113

General Assembly

Distr.: General
12 June 2018

English only

Human Rights Council
Thirty-eighth session
18 June-6 July 2018
Agenda item 2
Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Written statement* submitted by the International Association of Democratic Lawyers (IADL), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[25 May 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.18-09589(E)
1809589

Please recycle

Rights-Based, Victim-Centered Approach to Cholera in Haiti

For six years, the UN denied responsibility for the Haiti cholera epidemic, in the face of overwhelming scientific evidence—including the conclusions of the UN's own experts-- that UN peacekeepers had introduced the disease to the country. This denial was rightly met with global outcry; the UN Special Rapporteur on Extreme Poverty & Human Rights labelled it "*morally unconscionable, legally indefensible, and politically self-defeating.*" The refusal to accept accountability in Haiti hurt both the victims and the UN's credibility worldwide.

We welcome the important strides that the UN has since made to ensure victims are provided their right to an effective remedy. We were encouraged by the Secretary General's apology to the Haitian people in 2016 and its launch of a new plan to eliminate cholera and redress victims (the 'New Approach to Cholera in Haiti'). In making this commitment, the UN promised to provide a "material assistance package" to those most affected by cholera in order to "express the organization's regret" and "redress harm caused". The organization pledged to "put victims at the centre of the work" and consult with them in developing the assistance package.

It is deeply concerning, however, that eight years after the outbreak and almost eighteen months after the launch of the New Approach, the UN is retreating again from accountability. Meaningful consultations with victims have not occurred. Instead, the UN's piloting of a "symbolic" victim assistance project has been framed within Haiti's overall development agenda, consulting local leaders on their development priorities while publicly highlighting all perceived challenges of the individual payment approach. This contrasts with a rights-based approach which requires consulting victims on their needs and perspectives while canvassing both community projects as well as individual payments. While promoting Haiti's overall development is important, it is not a substitute for the remedies that cholera victims are entitled to under law.

Critical Opportunity for Engagement

We believe that the UN must prioritize human rights and return them to the center of its discussions on cholera response. Cholera victims have always articulated their demands on the UN in terms of their human rights. Legal scholars, human rights organizations and political leaders from around the world have insisted that victims have the right to an effective remedy, pursuant to the UN's own legal obligations and established human rights principles.

Several UN human rights mandate holders have underscored the need for victim remedies, including multiple special rapporteurs in letters addressed to the Secretary-General,[1] as well as High Commissioner Navi Pillay who called for compensation for Haiti's cholera victims in 2013. The engagement of the human rights system was critical to convincing the UN to apologize and announce a more just response in 2016.

However, since the launch of the UN's New Approach, there have not been any public statements from any UN entity, supporting the victims' human right to a remedy. This unilateral abandonment of the victims' rights recognized by the promises of 2016 shows a lack of commitment to universal ideals of human dignity and should be an embarrassment for the organization with a unique mandate from the international community to promote and protect all human rights. This silence by UN entities negates and denies the value of human rights and is appalling for many of the people the UN is meant to serve. Given the current geopolitical context, this trend is unlikely to change without considerable pressure being applied.

[1] Leilani Farha, Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Philip Alston, Special Rapporteur on extreme poverty and human rights; Gustavo Gallón, Independent Expert on the situation of human rights in Haiti; Dainius Puras, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Léo Heller, Special Rapporteur on the human right to safe drinking water and sanitation.

Recent troubling developments to the New Approach coupled with struggles in fundraising, mean that the UN's response to the cholera crisis is at a precarious point. There is a real risk that progress made in the last eighteen months may unravel, leaving a series of broken promises that will compound the damage to the UN's credibility and call into question the sincerity of the UN's efforts to improve accountability of peacekeeping operations to victims. At this regard, we strongly encourage the Office of the High Commissioner to exercise its leadership and maximize the opportunity by speaking out publicly on the UN's lack of a rights-based, victim-centered approach to cholera in Haiti.

While noting the strides made by the UN, we urge the OHCHR to speak out on the UN's inadequate follow through on its commitments made in the New Approach. Although we recognize the challenges to properly fundraise the New Approach given its voluntary nature and the competing demands within the UN system, it is essential that the UN's credibility requires that its promises be kept and that human rights are put at the center of its New Approach. This bears both on the ability of victims to obtain redress, and on the UN's own legitimacy as a promoter of human rights.

We also urge the OHCHR to underscore the UN's responsibility to provide meaningful compensation for victims pursuant to established human rights principles and the UN's own legal framework governing third-party claims. While establishing collective p.ojects can be a form of reparation, projects alone do not sufficiently respond to victims' individualized harms or constitute adequate restitution. Victims have the right to an effective and transparent remedy and individual compensation is a principal component of the right to a remedy.

While various forms of reparations in the context of mass harms can be presented to victims, including collective remedies, a decision to abandon individual compensation cannot be made without victims. We urge the High Commissioner and his office to highlight the need for the UN to meaningfully consult victims regarding their perspectives and priorities. Cholera victims have long advocated for individual compensation as they desperately require financial assistance to recover from the devastating economic harms the epidemic caused their families and livelihoods. Eight years into the epidemic, victims continue to suffer gravely. Thousands of already extremely poor families who lost breadwinners or livelihoods from cholera still struggle to pay high medical and burial costs years later, while countless children became orphaned or were forced to leave school. While we acknowledge the challenges to providing victims with meaningful redress, engaging victims as partners in the New Approach is essential, both to ensure success in surmounting the obstacles and in ensuring that the result is perceived as just by the victims.

UN cholera accountability in Haiti is at a critical juncture and support by the UN Human Rights Chief in calling for a much-needed rights-based focus will help ensure that the UN's promises transform into concrete results for the people of Haiti and for the UN.